

FCC Received February 23, 1994 @ 3:45 p.m.
Dona J. Bradshaw

ORIGINAL
RECEIVED

TRANSCRIPT OF PROCEEDINGS

MAR - 8 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

IN RE APPLICATIONS OF:

MM DOCKET NO. 93-300

STEPHEN O. MEREDITH

AL HAZELTON

Audubon, Iowa

DATE OF CONFERENCE: February 18, 1994

VOLUME: 1

PLACE OF CONFERENCE: Washington, D.C.

PAGES: 1-8

FREE STATE REPORTING, INC.
Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap. (410) 974-0947

MAR - 8 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

In the matter of:

STEPHEN O. MEREDITH

AL HAZELTON

Audubon, Iowa

MM DOCKET NO. 93-300

The above-entitled matter come on for pre-hearing conference pursuant to Notice before Judge John M. Frysiaak, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C. in Courtroom 4 on Friday, February 18, 1994 at 9:00 a.m.

APPEARANCES:

On behalf of Stephen O. Meredith:

GARY S. SMITHWICK, Esquire
SHAUN A. MAHER, Esquire
Smithwick & Belendiuk, P.C.
1990 M. Street, N.W.
Suite 510
Washington, D.C. 20036

On behalf of Al Hazelton:

BARRY A. FRIEDMAN, Esquire
Semmes, Bowen & Semmes
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036

I N D E X

	Page No.
1	
2	
3	
4	Opening Statement by Judge Frysiak 3
5	Statement by Mr. Friedman 4
6	Statement by Mr. Smithwick 5
7	Statement by Mr. Zauner 6
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	Conference Began: 9:00 a.m. Conference Ended: 9:07 a.m.

FREE STATE REPORTING, INC.
Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap. (410) 974-0947

P R O C E E D I N G S

1 JUDGE FRYSIK: All right. This is a pre-hearing
2 conference for Docket No. 93-300, Audubon, Iowa. May we note
3 your appearances? For Meredith.

4 MR. SMITHWICK: Your Honor, good morning, Gary
5 Smithwick and Shaun A. Maher for Steve Meredith.

6 MR. FRIEDMAN: Barry Friedman for Al Hazelton.

7 MR. ZAUNER: Robert A. Zauner for the Chief, Mass
8 Media Bureau.

9 JUDGE FRYSIK: Okay. Well, we have a short agenda
10 simply to discuss the status of the case. If you have
11 anything else, why please feel free to add to it. What is
12 your status? Are there any settlement possibilities?

13 MR. SMITHWICK: Your Honor, there were some
14 settlement discussions early on and they didn't bear fruit. I
15 certainly wouldn't rule out the possibility of settlement, but
16 we don't have anything on the table right this minute.

17 MR. FRIEDMAN: One is always hopeful but at the
18 moment Mr. Smithwick is right, nothing is on the table.

19 JUDGE FRYSIK: All right. Any problems with the
20 case otherwise?

21 MR. ZAUNER: None that I know of so far.

22 MR. FRIEDMAN: I guess -- there is the big problem,
23 Mr. Bechtel.

24 JUDGE FRYSIK: The what?

1 MR. FRIEDMAN: Bechtel, and then the black hole that
2 Bechtel has caused as to where things are going in regard to
3 comparative hearings. Perhaps Mr. Zauner can tell us if
4 anything is happening at the Commission. I do know that the
5 Court of Appeals has now thrown two more cases back to the
6 Commission to be dealt with. I gather the Chief Judge has
7 spoken to the General Counsel about what to do and I guess --
8 are we going to be fighting over something? There's nothing
9 to fight over. That -- my concern is that we are going to be
10 spending some time and effort in the near term fighting over
11 issues that maybe have no relevance any longer.

12 JUDGE FRYSIK: Well, that's true. We don't know
13 what the Commission is eventually going to do. I guess one of
14 the options is already gone and that is to seek
15 reconsideration of the decision. That time has already passed
16 so that's gone and before the Commission now is the
17 possibility of appealing that decision. It's still open.
18 And, otherwise, going into rulemaking which it might do to
19 determine what standards it would then use in the comparative
20 cases in the future. But for now we're still in the same
21 situation we've always been, that we're forced to go into
22 comparative hearings by the old standards even though the
23 Court of Appeals has indicated --

24 MR. FRIEDMAN: That the old standards are improper.

25 JUDGE FRYSIK: That's right. I mean, I certainly

1 | couldn't use those comparative standards in deciding the case
2 | and there are no other standards about which we can decide the
3 | case. It's certainly anomalous. I would --

4 | MR. SMITHWICK: Well, Your Honor, until some
5 | decision is made we had intended to seek the deposition of Mr.
6 | Hazelwood since he's made a claim for integration credit. I
7 | don't know where it may ultimately go but one of the things we
8 | wanted to take up today was to determine what Your Honor's
9 | pleasure was with respect to that, and I, I guess I'm hearing
10 | you say that we've got to proceed along with status quo until
11 | something changes.

12 | JUDGE FRYSIK: Right. You know, I think it makes
13 | discovery difficult because you're in that situation now and
14 | you don't know which way to go. You certainly don't want to
15 | foreclose any options. But as far as the hearing, when is our
16 | hearing date? April 28th, something like that?

17 | MR. FRIEDMAN: Yes, Your Honor.

18 | MR. SMITHWICK: Yes, Your Honor.

19 | JUDGE FRYSIK: I would imagine that certainly by
20 | that time we would have heard from the Commission as to what
21 | avenue it was going to follow and get some lead as to how to
22 | proceed in this case. I would hope that it already would have
23 | been forthcoming, but I'm sure it will come by that time,
24 | April 28th. It will be interesting to see how, how they come
25 | up with what they come up with. All right. Anything else?

1 Mr. Zauner, do you have anything to add to this?

2 MR. ZAUNER: No, Your Honor. Just in answer to the
3 question, I don't know anything more than you all seem to know
4 about the Bechtel decision and its impact.

5 JUDGE FRYSIK: Well, that's the way it is. We'll
6 proceed as best we can. If you have problems, why just let me
7 know. We'll try to accommodate you as much as we can.

8 MR. FRIEDMAN: The only thing is if the Commission
9 comes out with some grand advice as to how we try cases,
10 perhaps we should reconvene and deal with procedural issues
11 and hearing dates and whatever.

12 JUDGE FRYSIK: Yes.

13 MR. FRIEDMAN: If the Commission tells us that now
14 we're going to have new standards such as who's the best
15 dancer, maybe we'll have to, have to figure out how to deal
16 with that.

17 JUDGE FRYSIK: You're certainly going to have to
18 play it by ear.

19 MR. ZAUNER: At this point then, for purposes of the
20 proceeding here, what you're saying is that you will find
21 relevant discussions at depositions relating to integration?
22 Is that correct even --

23 JUDGE FRYSIK: At the moment I have no other
24 choice.

25 MR. ZAUNER: -- even though the court has --

1 JUDGE FRYSIAK: Pardon?

2 MR. ZAUNER: -- even though the court has said that
3 that is not to be a factor any longer?

4 MR. FRIEDMAN: That's the anomaly we use.

5 MR. ZAUNER: That's the, that's the problem.

6 MR. FRIEDMAN: If I objected on relevance grounds,
7 since the Court of Appeals has said integration doesn't count
8 -- I hate to see my client spending time and effort answering
9 questions on issues that are now -- that he's -- we've been
10 told by the Court of Appeals that have no value to the
11 decision you're going to make.

12 JUDGE FRYSIAK: I know, but if the Commission does
13 appeal and it's successful on appeal, then we're back to where
14 we were. I mean, we at this point don't know exactly which
15 way to go, I don't think.

16 MR. SMITHWICK: That's correct.

17 JUDGE FRYSIAK: So if you need relief, why just ask
18 for it.

19 MR. FRIEDMAN: Perhaps if I could ask Mr. Zauner,
20 what is happening in other cases? Are they proceeding or are
21 they staying or --

22 MR. ZAUNER: The only thing that I'm seeing is
23 proposed findings being filed with references to the Bechtel
24 decision and I think in some instances people are filing
25 findings with regard to and another cases they aren't and it

1 looks to me, if I'm reading things correctly, that the General
2 Counsel's office is granting extensions of time much more
3 liberally than they did in the past because I guess they're
4 not going to take any action on any of these comparative cases
5 until they see what happens in the Bechtel matter.

6 JUDGE FRYSIK: Right. If the Commission does
7 pursue rulemaking, I'm sure it would give us a stay on all the
8 proceedings presently pending. Now, at best, though, if you
9 decide not to try the comparative aspects in your discovery
10 and at a later time learn that it's factored back in, then I'd
11 give you time to revisit that, but I -- you know, I can't tell
12 you anymore than what has happened so far. Okay?

13 MR. SMITHWICK: Your Honor, thank you.

14 JUDGE FRYSIK: All right. If there's nothing else,
15 then we stand adjourned until -- roughly until the 28th of
16 April.

17 (Whereupon, the conference was adjourned at 9:07
18 a.m.).

19
20
21
22
23
24
25

CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

IN RE APPLICATIONS OF AUDUBON, IOWA

Name

MM DOCKET NO. 93-300

Docket No.

WASHINGTON, D.C.

Place

FEBRUARY 18, 1994

Date

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 8, inclusive, are the true, accurate and complete transcript prepared from the reporting by ALICE WEHNER in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

February 24, 1994
Date

Cheryl L. Phipps
Cheryl L. Phipps, Transcriber
Free State Reporting, Inc.

February 24, 1994
Date

Diane S. Windell
Diane S. Windell, Proofreader
Free State Reporting, Inc.

February 24, 1994
Date

Alice Wehner
Alice Wehner, Reporter
Free State Reporting, Inc.

FREE STATE REPORTING, INC.

Court Reporting Depositions
D.C. Area 261-1902
Balt. & Annap. 974-8947